

S.B.Civil Writ Petition No.2878/2007

The State Bank of India

VS

Paras Mal & Anr.

Date of order : 27.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.JK Chanda, for the petitioner.
Mr.Narendra Shrimali, for the respondent.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 24.3.2007 by which the trial court allowed the amendment application filed by the defendant.

Brief facts of the case as stated by learned counsel for the petitioner are that the plaintiff filed the suit for recovery of the loan amount advanced on one three wheeler and before the trial court submitted an application for taking possession of the three wheeler from defendant on which finance was advanced by the plaintiff bank so that the vehicle may be sold and amount may be adjusted against the dues. The court allowed plaintiff to take possession of the three wheeler from defendant and the bank took possession of the three wheeler. The three wheeler yet has not been auctioned. The defendant submitted an application for amendment of the written statement under Order 6 Rule 17 CPC and

stated that the plaintiff bank, on first default of the defendant, should have taken possession of the three wheeler and should have sold it and should have adjusted the amount against the loan, but that was not done by the plaintiff bank. The defendant further submitted that after taking possession of vehicle by the plaintiff, the plaintiff has damaged the tempo and thereby the value of the tempo has substantial come down. The defendant therefore, sought permission of the trial court that the defendant may be permitted to claim damages and it may be held that plaintiff is not entitled to claim interest over any amount. The said amendment application was allowed by the trial court vide impugned order.

Learned counsel for the petitioner vehemently submitted that the amendment could not have been allowed by the trial court because of the simple reason that firstly the plaintiff took possession of the tempo with the permission of the court and, thereafter, the court did not grant any permission to sell the said tempo- three wheeler and, therefore, there was no fault of the plaintiff and in consequence the defendant's objection is absolutely frivolous and unnecessary also. It is also submitted that the amendment at such belated stage could not have been allowed, but the trial court has allowed

the amendment in the written statement. It is also submitted that in several judgments the Hon'ble Apex Court also held that the amendment, after such an inordinate delay cannot be allowed when the fact was in the knowledge of the defendant. In this case, the defendant had full knowledge of taking possession of the tempo by the plaintiff bank, therefore, he could have sought amendment forthwith.

I considered the submissions of learned counsel for the petitioner and perused the impugned order also.

Some cause of action accrues and becomes stronger and valid only by passing of time. If a property seized and is not auctioned in time and because of passing of time, the property's value decreased then the cause of action if accrues then it may become stronger as value reduces by passing of time more and more. The objection of delay in such circumstances, in fact, is not a valid defence. If the argument of learned counsel for the petitioner is accepted then according to the petitioner on the date when possession of the three wheeler was taken by the defendant, the defendant should have amended the written statement, then for what purpose, he should have amended the written statement remained unexplained. Mere seizure of tempo may have caused other losses to the defendant, but on the day when

the tempo was seized, there was no damage to the value of tempo and therefore, the defendant could not have claimed any damages from plaintiff on account of plaintiff's failure to sell the property in time. It is other thing that whether for that purpose, the plaintiff in fact, is liable for damages or defendant can claim exemption from payment of interest that is required to be decided by the trial court after trial, but so far as amendment in written statement is concerned, that could not have been refused.

In view of the above reasons, the proposition that the defendant should have sought amendment on any earlier occasion cannot be applied. Consequently, I do not find any merit in the writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-